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IN
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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

IV

SAXON TITHING-MEN IN AMERICA

Read before the American Antiquarian Society, October 21, 1881

By HERBERT B. ADAMS, Ph. D.

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"Imposuerunt justiciarios super quosque x frithborgos, quos decanos possumus dicere, Anglice autem *tyenthe-heved* vocati sunt, hoc est caput x."—*Law of Edward the Confessor.*

"Praesit autem singulis hominum novenis decimus."—*Law of Henry I.*

"A Tything-man in each Manor, a Constable in each Hundred."—*Bacon, Laws of Maryland*, 1638.

"See to it that there bee one man appointed to inspect the ten families of his neighbours, which tything man or men . . . . haue power, in the absence of the constable to apprehend . . . ."—*Colonial Law of Massachusetts*, 1677.

Tithing-Men are still annually chosen in the Town-Meetings of Northampton, Massachusetts.—*Town Records*, 1882.

"The History of Institutions . . . . abounds in examples of that continuity of life, the realisation of which is necessary to give the reader a personal hold on the past and a right judgment of the present. For the roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present comes to be what it is."—*Stubbs, Constitutional History of England.*

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TITHING-MEN.

THE office of Tithing-man has never been satisfactorily explained. New England traditions describe this institution only in its later ecclesiastical form, which was by no means its primitive character even in this country. The oldest people in New England remember the Tithing-man as a kind of Sunday Constable, whose special duty it was, in the old parish meeting-house, to quiet the restlessness of youth and to disturb the slumbers of age. Many are the tales which grandfathers can tell concerning this ancient watchman of the congregation, who saw to it that all persons were attentive except himself, and who occasionally broke the peace by sharply rapping with his tune-book and pointing at some whispering boy, or else by patrolling the aisles to arouse sleeping saints by means of his black pole, tipped at one end with brass.[1] In some churches there were two or three

[1] This was the old English Tipstaffe, an emblem of the constabulary office, and representing the person of the King. We shall consider the subject of the Tipstaffe or Black Rod more particularly in a paper on "Constables." By the Providence laws of Massachusetts (I. 155, 329) Tithing-men were required to "have a black staffe of two feet long, tipped at one end with brass about three inches, as a badge of their office." We find these black staves mentioned in local town records, *e. g.*, in the town records of Salem, in 1646, i. 147; in the town records of Groton, edited by Dr. Green, i. 19, Item, "toe black staffe," three shillings sixpence. Survivals of these black wands have been seen by the writer in actual use by special constables at Amherst College Commencements, which are still held in the old parish church. The use of wands, with ribbon tips, by ushers, is only an æsthetic transformation of the ancient Tipstaffe. It is said that in some early New England parishes, the Tithing-man's rod was tipped at one end, not with brass, but with a squirrel's tail. This end was used in awakening women. The other end was a deer's hoof, which carried sharp conviction to men and boys.

of these grim, vigilant Tithing-men. It is said that one or two of them sometimes sat under the very shadow of the pulpit, facing the congregation.[1] But more usually one Tithing-man sat at each door of the meeting-house to keep out dogs, and one often sat in the gallery to keep in boys.[2]

From original town records it appears that it was the duty of the early New England Tithing-man, not merely to preserve order in the meeting-house, but to see to it that every one went to church. The Tithing-man was a kind of ecclesiastical "whipper-in." After looking over the congregation to find if any seats were vacant, the Tithing-men would steal out and explore the horse-sheds, the adjoining fields and orchards, the inns and ordinaries, and even the houses of the village, in order to search out skulkers from divine service. According to the town records of Salem, it is clear that as early as 1644, in that village at least, two men were "appointed euery Lord's day to walke forth in the time of God's worshippe, to take notice of such as either lye about the meeting-howse without attending to the word or ordinances, or that lye at home or in the fields, w'thout giuing good account thereof, and to take the names of such persons & to present them to the Magistrate, whereby they may be accordinglie proceeded against."[3]

A study of the statutes of the mother country, of the period immediately preceding the Puritan migration, shows that the custom of enforcing attendance upon church services

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[1] Blood. History of Temple, N. H., p. 87.

[2] In the town of Salem, the Tithing-men or Constables, used to see to it that no boys escaped from church and that no dogs slunk in. The "Dog Whipper" was a regular institution in certain old English towns, notably in Exeter and Congleton (in Chester). Mr. Edward A. Freeman has called our attention to a curious law of Edgar (see Thorpe's Ancient Laws and Institutes of England, ii. 251), whereby parish priests were to see to it that no dog should enter church, nor yet more a swine, if it could possibly be prevented!

[3] Town Records of Salem, 131, part 1, 1634-1659, published in the Historical Collections of the Essex Institute, second series, Vol. I.

was by no means original with the settlers of New England. By an Act[1] passed in the reign of James I., all people were obliged by law to "repaire very Sunday" to church, under penalty of twelve pence for every absence. Upon sufficient information, given of course by the Parish Constable or Tithing-man, the justice of the peace issued a warrant to the church warden to distrain goods, if necessary, in collecting such parish fines. All servants, sojourners, and strangers within a man's gates were brought under the operation of this law, so that the custom of Sunday inspection of every household must have been in vogue in Old England, long before it was revived at Salem. These laws requiring church attendance are of very ancient standing. By the first Act of Elizabeth's reign, "every person and persons inhabiting within this Realme—shall diligentlye and faithefully, having no lawfull or reasonable Excuse to be absent, endevour themselves to resorte to theyr Parishe Churche or Chappell accustomed—upon every Sondaye and other days ordeined and used to be kept as Holy days, and ther tabyde orderlye and soberly during the tyme of the Common Prayer, Preachings and other Service of God—upon payne of punishment by the Censures of the Churche, and also upon payne that every person so offending shall forfeite for every suche offence twelve pens, to be levied by the Churchewardens of the Parishe—to thuse of the Poore."[2] The Church of England and its Puritan reformers can claim no monopoly in this kind of legislation, for it roots far back in the middle ages in the earliest Catholic laws of England against irregular attendance upon conventicles contrary to the Catholic faith, especially against the meetings of Lollards.[3]

In early New England, the execution of the laws for the

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[1] Statutes of the Realm, 4 Jac. I. c. v.

[2] Statutes of the Realm, 1 Eliz. c. 2, III.; cf. 23 Eliz. c. i. and 35 Eliz. c. i.

[3] Rolls of Parliament, III., 467, 583; IV., 24.

observance of the Sabbath in other ways than church-going was intrusted to the local Tithing-men. Travel on that day was strictly forbidden. There are many persons still living who can remember that the parish Tithing-man once discharged the pious function of stopping all unnecessary riding and driving on Sunday. An amusing story is told of the writer's grandfather, who was Tithing-man for his parish in Amherst, Massachusetts, and notoriously strict in the discharge of his office both in church and out. Early one Sabbath morning he saw a man driving past his house, with a little hair-trunk in the back end of his wagon. Suspecting that the man was upon a journey, the Tithing-man hailed him: "Sir, do you know that travel on Sunday is forbidden by law?" "Yes sir," said the stranger in a somewhat melancholy tone. The Tithing-man caught the idea. "Of course," he said, "in case of sickness or death, a Sabbath journey is sometimes permitted. The traveller replied in a subdued manner, "my wife is lying dead in the town just above here." "Oh, well," said the Tithing-man, "you can drive on." The man drove on a safe distance, then looked back and called out: "She has been lying dead for twenty years!"

The law against Sunday travel has been rigidly enforced, in one way or another, by Tithing-men, Constables, local police, or local opinion, down to the present day in many parts of New England. The late Brasseur de Bourbourg, who made Mexican antiquities his life study, once told the writer of an unhappy experience in Boston forty years ago, in trying to procure a carriage on the Sabbath, for the sake of visiting some Catholic dignitary. But neither Catholic nor Protestant England has set Puritan New England a liberal example in the matter of Sunday laws. Moncure D. Conway, in a recent letter to the *Cincinnati Commercial*, narrates the serious difficulty encountered by three American travellers in attempting to procure a Sunday dinner in London, and that after attending church. Not only are Sunday

accommodations for travellers very much restricted to this day in many parts of old England, but travelling itself on the Sabbath has been more or less restrained by law, ever since the time of the Saxon kings, in whose good Catholic reigns Sunday used to begin on Saturday at sunset, and close Sunday evening.[1] The statutes of England at the time the Puritans came over, are full of legislation against breach of the Sabbath by travellers, traders, drovers, butchers, laborers, boatmen, wagoners, and by conveyances of every description.

From the colonial laws of Massachusetts it appears that the functions of the Tithing-man were not restricted to the arrest of "all Saboath breakers," but extended to the inspection of licensed inns for the sake of discovering "disorderly tiplers" on the evening of that day or "*at any other time*" during the week. He could carry offenders before any magistrate and commit them to prison "as any constable may doe." For Sunday offenders was reserved the special disgrace of imprisonment in the town "cage" which was "set up in the market place."[2] Even by such links as these are the towns of New England bound to old English parish life.[3] The expression jail-bird has some significance in the light of the evolution of prisons from cages. The use of the pillory and the stocks in punishment for drunkenness are similar links of parish habit. The very liquors that New England Tithing-men were instructed to seek out in unlicensed houses or to obtain a satisfactory account of in regular inns, afford as suggestive a commentary upon the English origin of intemperance in New England as does the mention of beer in the Norse sagas of Vineland upon the Teutonic origin of the first white settlers

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[1] Lingard. History and Antiquities of the Anglo-Saxon Church, I., 309-11.

[2] Records of Massachusetts, v. 133.

[3] Palgrave, English Commonwealth. Anglo-Saxon Period. Vol. ii, p. clxvi.

XUM

of America. "Strong beere, ale, cider, perry,[1] matheglin,[2] rumme, brandy,"[3] these things all have a very English smack. Legislation against the excessive use of these drinks did not begin in New England. The Puritans of Massachusetts struggled against intemperance as did their English fathers before them, and in precisely the same way, by fines and penalties, by laws executed through "Constables, Churchwardens, Headboroughes, Tithing-men, Alecunners and Sydemen," as described in the act of the fourth year of King James I.[4]

It is perhaps not generally known that the office of Tithing-man in early New England was very like that of a parish constable, of which office, indeed, the former is the historical prototype. In Massachusetts, and elsewhere in New England, the two institutions long continued to exist side by side, although as far as local and colonial records give any decisive evidence, Constables were appointed long before Tithing-men. But the latter is by far the more ancient office in the mother country, and it may have been revived by local hamlets in New England, years before it was formally recognized in town or colony records. The Tithing-men had many functions in common with Constables. Both endeavored to repress tippling, gaming, night-walking, strolling, begging, roaming streets or fields, and idleness in general. They were to see to it that every man was about some lawful and useful business. They restrained butchers and drovers

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[1] A liquor prepared from the juice of pears, like cider from apples.

[2] A fermented liquor made of honey and water boiled together. The name Metheglin is Welsh and is derived from medd (mead) and llyn (liquor). It is one of those familiar household terms which have come down to us from that "exterminated" race, the Kelts. Words like dad, babe, lad, lass, gown, flannel, clout, crock, cabin, basket, bran, flask, mattock, are collectively stronger evidence of Keltic influences surviving in Saxon homes than even the above home-made drink.

[3] Records of Massachusetts, v. 240.

[4] Statutes of the Realm, 4 Jac. I. c. v. Cf. I. Jac. I. c. 9.

from cruelty to animals, and kept boys and "all persons from swimming in the water."[1]

The Tithing-man may be distinguished from the Constable by the fact that the former's duties related more especially to the control of family life and of the morals of his neighborhood. The Tithing-man's power came nearer *home* than did that of the Constable; it reached over the threshold of every family in the hamlet; it was patriarchal, fatherly, neighborly, in the strictest sense. The Tithing-men visited Cotters to see if they kept Saturday night. The Tithing-man saw to it that family government was maintained; that all single persons were joined to some family; that children and servants were properly taught and trained at home; that the same were kept from all disorderly, profligate, idle, uncivil and rude practices abroad; in short, that the whole community grew up as one united family in the nurture and admonition of the law.[2] The Tithing-man was the father of the hamlet; he felt himself personally responsible for the character and conduct of all households in his neighborhood. In point of fact, the Tithing-man was held strictly to account by the Selectmen, or Townsmen, for the presence of any new-comer into his hamlet. By a town order of Dorchester, in the year 1678, it was required "that the tithing-men in their seuerall presincts should inspect all inmats that doe come into each of their presincts, either single persons or famelies, and to giue spedy information therof vnto the Select men from time to time or to some of them that order may be taken about them."[3]

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[1] See references to next paragraph.

[2] Records of Massachusetts, v., 241. Acts and Resolves of the Province of Massachusetts Bay, i., 58, 59, 60. Hudson's History of Lexington, 69.

[3] Fourth report of the Record Commissioners of Boston, Dorchester Town Records, 223. Compare the duty of constables as stated in the Statute of Winchester (1285) to "present all such as do lodge strangers in uplandish towns, for whom they will not answer." Statutes of the Realm, i., 98.

XUM

The Tithing-men were not appointed by the Selectmen, and possibly they were not originally chosen in town meeting, but elected by neighborhoods or hamlets.[1] By an Act of the General Court of Massachusetts in 1679 "the selectmen of each toune take care that tything men be annually chosen *in their seuerall precincts* of their most prudent & discreet inhabitants, & sworne to the faithfull dischardge of their trust."[2] Tithing-men were empowered, like Constables, to assist one another in their several precincts, "and to act in one anothers precincts w'th as full power as in their oune, and yet to reteyne their special charges w'thin their oune bounds."[3] It is a very remarkable fact, which, as far as we know, has entirely escaped attention as regards its historical significance, that the Tithing-man of Massachusetts was originally the head man of *a neighborhood of at least ten families.* This was the revival in all its purity of the Saxon Tithing, an institution more ancient than towns or parishes, a patriarchal institution underlying all local forms of Saxon self-government. It was the unit of the Hundred, which archaic type of organization is still known in Delaware and remembered in Maryland, a subject which we shall soon investigate. In 1638 a bill was introduced into the General Assembly of Maryland providing for "a Tythingman in each Manor" and "a Constable in each Hundred."[4] There can be no doubt as to the perpetuation of the Saxon Tithing in New England, although in the South it does not appear to have been so common as the Hundred. By an Act of the Massachusetts Colony as late as 1677 the selectmen of every town then existing in Massachusetts were ordered "to see to it that there bee one man appointed *to inspect the ten families of his neighbours.*"[5] Such was the

[1] In later times, Tithing-men were always elected in town meeting. See Acts and Resolves of the Province of Massachusetts Bay, i., 155, 328.

[2] Records of Massachusetts, v., 240.

[3] Ibid., 155.

[4] Bacon, Laws of Maryland, 1638, ch. ii., 12.

[5] Records of Massachusetts, v., 133.

original character of the Tithing-man's office in New England as well as in Old England. Arnold has probably gone wrong in his History of Rhode Island[1] in connecting the duty of Tithing-men with that of collecting tithes. The correspondence of names was purely accidental. In this view, we are supported by Mr. Edward A. Freeman, who says there is no historic connection between Tithes and Tithing-men.

In Plymouth Colony, the Saxon Tithing was reinstated for the government of the Indians. It was ordered that in each town where Indians dwelt that every tenth Indian should be appointed Tithing-man by the Court of Assistants. His duty was to have the care and oversight of his nine men and to present their faults and misdemeanors to a so-called "overseer," who received his commission from the governor.[2] This was precisely like the duty of the Tithing-men of Old England at the time the Pilgrims came over. English Tithing-men were required by law to report to the justice of the peace the names of all rogues and vagabonds apprehended, punished or sent to the house of correction. Courts of law were actually introduced among the Indians of Plymouth Colony, the white settlers considering, very wisely, that such a course would have "a good tendencye to the ciuilliseing of the said Indians."[3] In a letter of the Reverend Mr. Treat, of Eastham, to the Reverend Increase Mather, this good missionary remarks, that there are five hundred Indians in his township. "They have four distinct assemblies, in four villages, in which they have four teachers of their own choice. . . . There are also six justices of the peace, or magistrates in these villages, who regulate their civil affairs, and punish criminals and transgressors of the civil law. They have three stated courts, and other inferior officers."[4] These were probably Tithing-

[1] Arnold, History of Rhode Island, ii., 161.
[2] Plymouth Colony Laws, 253.
[3] Ibid., 239.
[4] Pratt, History of Eastham, Wellfleet and Orleans, 38.

XUM

men. Indians, like white men, were strictly watched on the Sabbath. They were forbidden to hunt or fish, to plant or hoe corn, to carry burdens, or "to doe any seruill worke on the Lord's day."[1]

There are some rather curious facts concerning this condition of practical Indian serfdom in the towns of Plymouth Colony. By a system of courts and Tithing-men, the Indians were brought as completely under the subjection of the whites as were ever the subdued Britains under the Saxons, or the conquered Saxons under the heel of their Norman lords. And it is very interesting to observe that, in all three instances, the servile population was held down by the very same means. Indians were not only restrained from their natural freedom by these Tithing-men, but were to a great extent reduced to "seruill worke" and the "carrying of burthens," at first, probably by a kind of voluntary enthrallment for the sake of protection, like the Saxon freemen, then by the slowly increasing pressure of the law. The following extract from the Plymouth records is very interesting in the light of comparative jurisprudence, particularly in the light of the Fugitive Slave law, "if any Indian who is a servant to the English shall run away amongst any Indians, such Indians whither such a runaway Indian is come, shall forthwith giue notice of the said Runaway to the Indian Constable [or the Tithing-man] whoe shall immediately apprehend such Indian servant, and carry him or her before the Ouerseer or next Majestrate, whoe shall cause such servants to be whipt and sent home by the Constable to his or her master, whoe shall pay said Constable for his service ——."[2] It is also worthy of note that Indian captives, taken in war, were sent South and sold as slaves to the Bermudas.[3] Indians were also sold for debt or theft, at public auction,

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[1] Plymouth Colony Laws, 60.

[2] Ibid., 255.

[3] Ibid., 242. King Philip's son was sold into slavery in the Bermudas.

by the Constable of Plymouth towns.[1] We have in New England an interesting survival of this old Saxon custom in the practice of farming out the labor of the town's poor to the highest bidder. Convict labor, southern chain-gangs, and Delaware whipping-posts, all repose upon the same solid Saxon ground, *servitude to the law*. It is folly to heap reproaches upon the Pilgrim Fathers or upon any generation of men. We Americans, whether in the North or at the South, are of the same English blood; we have inherited kindred institutions, with much the same virtues and about the same vices.

Tithings and Tithing-men were no development of New England Puritanism. These institutions for the strict and wholesome government of neighborhoods were transmitted to us from the mother country. We may perhaps discover the first step of the transmission process in the instructions given to Governor Endicott, in 1629, by the Massachusetts Company while they were yet in England. This business association of honorable and enterprising Englishmen, who, according to their own accounts, provided for New England, "Ministers, men skylfull in making of pitch, of salt, Vyne Planters,—Wheat, rye, barley, oates,—stones, of all sorts of fruites,"[2] this thoughtful Company provided also the seeds of English self-government in Towns and Tithings. They said to Endicott by letter, "wee hope yow will fynde many religious, discreete, and well ordered persons, wch yow must sett over the rest devyding them into famylies, placing some wth the ministers, and others under such as, beeing honest men (and of their owne calling as neere as may bee) may haue care to see them well educated in their generall callings as Christians, and particuler according to their seuerall trades or fitness in disposition to learne a trade."[3] To any one familiar with the English law of that period con-

[1] Plymouth Colony Laws, 237.
[2] Records of Massachusetts, i., 24-5.
[3] Ibid., 393; cf. 397, 400, 405.

cerning the training of servants and apprentices, the above instructions to Endicott, which are repeated over and over again, will appear to be only the natural outgrowth of the family regulations of the mother country.

In the library of the Massachusetts Historical Society at Boston is preserved a curious little volume in old English black-letter, on "The Dvties of Constables, Borsholders, Tythingmen, and such other lowe and Lay Ministers of the Peace, by William Lambard, of Lincolnes Inne, Gent, London, 1614." Published before either Pilgrims or Puritans came over and possibly brought to this country by one of the first settlers (for another of the writings of this same William Lambard was owned by Adam Winthrop and was brought over by his son, Governor John Winthrop, together with the Charter of Massachusetts), the above treatise must be an important and trustworthy source of information as to the exact nature of these offices in Old England at the period of their transmission to the new World. It appears that there were many variations of the name of Tithing-man in the mother country, just as in the Town Records of Groton, carefully edited according to the original spelling, by Dr. Samuel A. Green, we find a great variety of terms, from Tidingman and Tighing man to Tiethengman and Tiethenman.[1] In Saxon Law we find Tineman, Tynmanna, Teothungman, Teothungmannus. In mediæval Latin occur Decanus, Decimus, Decimalis Homo. We also find Head-Borough, Head-Boroughman, Borough Elder, Borsholder (Bohrs-Ealdor) or the Elder of the Pledge, Chief of the Pledge, Capitalis, Princeps Plegii, and the like. These names we have gathered from many different sources, but they are all intelligible in the light of the following extract from Lambard's Constable: "Now whereas every of these tithings or boroughs did use to make choice of one man amongst themselves, to speak, and to do, in the name of

[1] Green. The early Records of Groton, Massachusetts, 101, 108, 112, 116, 125.

them all; he was therefore in some places called the Tything-man, in other places the Borough's elder (whom we now call Bors-holder), in other places the Boro-head or Head-borough, and in some other places the Chief-pledge; which last name doth plainly expound the other three that are next before it; for Head or Elder of the Boroughs, and Chief of the Pledges, be all one."

This extract from Lambard we have taken from Toulmin Smith's work on the Parish (230), showing that Lambard is recognized as good authority by one of the best modern writers upon the subject of English local institutions. Blackstone based his account of "Constables" and "Justices of the Peace" upon Lambard, and scarcely ever went back of the latter's authority. But Lambard while trustworthy in matters belonging to his own time, is to be read with great caution and in the light of modern research as regards all questions of Saxon antiquities. The following extracts from Lambard we have made from the edition of the Duties of Constables, now preserved in the library of the Massachusetts Historical Society. He says, "In some of the Westerne parts of England where there be many Tythingmen in one parish, there only one of them is a Constable for the King, and the rest do serue but as the ancient Tithingmen did." Lambard also says, "In some shires, where euerie Third borow hath a Constable, there the officers of the other two be called Third borowes." The latter office is the same as that of Tithing-man. Although not everywhere taking the name of Petty Constable, which was a term introduced by the Normans, the Saxon Tithing-man acquired under the Norman régime certain constabulary functions, and these we have partly noticed in our account of the New England Tithing-man. Lambard says the Tithing-man really combined two offices "the one being his ancient and first office, and the other his later made office." Upon the basis of original records and of an unpublished manuscript account of constabulary duties, which was brought over to this

country by one of the early settlers of Dorchester, we shall treat of the office of "Constables" in a special monograph, to be published by the New England Historic-Genealogical Society.[1] We are here concerned with the ancient Tithing-man, who was the father of the Norman petty constable and the grandfather of New England selectmen.

According to Lambard, the ancient office of Tithing-man was headship of the Frank-pledge. This is not the whole truth, for the institutions of Tithing and Tithing-men are older than that of Frank-pledge. Canon Stubbs[2] and George Waitz,[3] the most recent authorities upon English and German constitutional history respectively, maintain that, before the Norman conquest, there is no positive proof of the existence of collective responsibility for crime committed within a Tithing. On the other hand, Palgrave[4] and the older authorities are inclined to discover germs of the system of Frank-pledge even in Anglo-Saxon times. By a law of Canute, every freeman who desired to enjoy the privilege of exculpation by the oath of his friends or the protection of *Wer-geld* (money payment for injury) was to be enrolled in a Hundred and in a Tithing; he was to be brought under pledge or "Borh," and this was to hold him to right. The term Frank-pledge is a vulgar corruption of the Saxon *Frith-borh* or peace-pledge. Whether or no the outgrowth of Saxon beginnings, this institution in Norman times was certainly the collective personal pledge of ten or more men to their lord. The idea of associate re-

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[1] Historical and Genealogical Register, April and July, 1882.

[2] Stubbs' Constitutional History of England, i., 87.

[3] Waitz, Deutsche Verfassungsgeschichte, 1., 458 (ed. 1865.) Waitz takes strong ground: "Es gab keine Gesammtbürgerschaft unter den Angelsachsen, weder für das Wergeld noch in irgend welchem andern Sinn, weder vor noch nach Aelfreds Zeiten."

[4] Palgrave, English Commonwealth, part ii., cxxiii. "The system was developed between the accession of Canute and the demise of the Conqueror; and it is not improbable that the Normans completed what the Danes had begun."

sponsibility is here of more importance than the mere number, for as many as eighty men were sometimes admitted into one Tithing. Ten was the least number allowed in Frank-pledge.[1] Probably the Normans infused greater energy into the Saxon Tithing and gave to the idea of *Frith-borh* a more strictly collective sense, as a better surety for the preservation of the peace.[2] The old Saxon Tithing-man certainly became the Borhs-Ealdor (The Borsholder of Lambard) which signifies the same as the Elder or Chief of the Pledge.

The custom of Frank-pledge and the relation of Tithing-man to the same are well described in the laws of Henry I, and also in those of Edward the Confessor, both of which collections, however, belong to a period later than the time of the kings whose names they bear. In the laws of Henry there is an ordinance relating to the Hundred, giving special authority, if necessary, to all freeman, whether retainers or men having their own hearthstone (*heorthfest*), to convene twice a year in their own Hunderd, for the purpose of ascertaining whether the Tithings are full, whether any have withdrawn, if so, how and why, and whether any have been added. It was enjoined, moreover, that a Tithing-man (*decimus*) preside over every nine men and one of the better sort over every Hundred, who should be called an Alderman (*aldremannus*)[3] and take diligent care to promote the execution of law, whether human or divine.[4] The

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[1] Palgrave, ii., cxxv.

[2] Dr. Reinhold Schmid, in his edition of the Gesetze der Angelsachsen (ed. of 1858, p. 649) calls attention to the fact that we have no evidence of the Normans possessing any such institution as Frank-pledge in Normandy and says: "So weit unsere Kunde von dem Verhaeltniss bis jetzt reicht, bleibt daher der angelsaechsische Ursprung der Zehntbuergerschaft das Wahrscheinlichere." To this conclusion we had already come before discovering Schmid's note upon "Rechtsbuergschaft," but we gladly rest our results upon his solid authority.

[3] "Vocabantur elderman, non propter senectuten sed propter sapientiam." Law of Ed. Con. (Thorpe, i., 456.)

[4] Ancient Laws and Institutes of England, i., 515; also in Stubbs' Select Charters, 106.

law of Frank-pledge, or Frith-Borg, ascribed to Edward the Confessor, was not framed until the twelfth century. We adopt Kemble's translation: "Another peace, the greatest of all, there is whereby all are maintained in firmer state, to wit in the establishment of a guarantee, which the English call Frithborgas, with the exception of the men of York, who call it Tenmannetale, that is, the number of ten men. And it consists in this, that in all the vills throughout the kingdom, all men are bound to be in a guarantee by tens, so that if any one of the ten men offend the other nine may hold him to right."[1] The custom of viewing Frank-pledge in the court leet or popular court of the manor for the purpose of seeing that the tenantry are properly enrolled in Tithings, is said to prevail in Yorkshire to this day.[2]

The origin of Tithings, and of their multiple the Hundred, is one of the most obscure questions in the early history of English institutions. Blackstone and the earlier writers dispose of the question very summarily by ascribing the above types of local organization to Alfred: "to him," says Blackstone, "we owe that masterpiece of judicial polity, the subdivision of England into tithings and hundreds, if not into counties." The monkish testimony of Ingulph, upon which this widely accepted statement rests, is utterly worthless upon this point. It was customary in the Middle Ages to ascribe every good institution either to Alfred or to Edward the Confessor. If pious monks and popular opinion are to be followed in institutional history, then we must ascribe to King Alfred the origin of trial by jury. As an able critic, presumably Palgrave, said years ago in the Edinburgh Review,[3] if Alfred was really the originator of Hun-

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[1] Ancient Laws and Institutes, i., 450. Kemble, Saxons in England, i., 249-50.

[2] Stubbs' Constitutional History of England, i., 88, note 4.

[3] Edinburgh Review (Feb. 1822), p. 289; cf. Hallam, Middle Ages, note vi. to ch. viii., part II.

dreds and Tithings, and shires, "he must also have been the creator of the common law itself, which only proceeds in conjunction with these divisions." The fact is, Blackstone and the older writers, Coke, Littleton, Braceton, knew really very little about the origin of English institutions. The whole science of institutional history is one of modern growth and can be pursued only in the light of comparative politics and of comparative jurisprudence, along lines of inquiry opened up by such pioneer investigators as Von Maurer, Hanssen, Nasse, Waitz, Gneist, Stubbs, Freeman, Maine, and specialists in Anglo-Saxon law. The study of Saxon institutions was not possible before the labors of Palgrave, Kemble, Thorpe, and Reinhold Schmid in classifying materials and editing statutes and codices. But with all these modern facilities, it is not easy to trace out to one's entire satisfaction the origin of England's early institutions of law and government.

We find Tithings mentioned in the law of Canute already cited. We can trace back the institution through several Saxon reigns, but finally we lose all trace of it. Among the laws of Edgar, in the ordinance relating to the Hundred it is ordered that if a thief is to be pursued, the fact is to be made known to the Hundredman and he is to inform the Tithing-man, and all are to "go forth to where God may direct them," so that they "do justice on the thief, as it was formerly the enactment of Edmund."[1] Here, if we mistake not, we are upon the historic track of the old Saxon Hue and Cry. We note from the laws of Edgar that "if the hundred pursue a track into another hundred,"[2] warning is to be given to the Hundredman there, so that he may join in the chase. Following a track from one Hundred into another would seem to imply territorial limits. In the laws of Edgar, it is also prescribed that no one shall take possession of unknown cattle "without the testimonies of the

[1] Ancient Laws and Statutes of England, i., 259.
[2] Ibid., 261.

men of the Hundred, or of the Tithing-man."[1] In the laws of Athelstan, among the so-called *Judicia Civitatis Lundoniæ* it is ordered that, in tracing or pursuing a criminal, every man shall render aid, "so long as the track is known; and after the track has failed him, that one man be found [from one Tithing] where there is a large population, as well as from one Tithing where a less population is, either to ride or to go (unless there be need of more)."[2] This appears to imply a territorial seat even for the Tithing, as an integral part of the Hundred, as well as a varying number of inhabitants within the Tithing itself.

Probably the Saxon Tithing had its origin in the personal association of warriors by tens and hundreds. Such a decimal system of military organization existed among various early Teutonic peoples, if not throughout the whole Aryan family of nations. Even the Jews fought by tens, and fifties, and hundreds. Undoubtedly kinship had originally something to do with the marshalling of hosts. The Homeric warriors fought under patriarchal chiefs. The ancient Germans, according to Tacitus, were arrayed by families and near kinsmen (*familiæ et propinquitates*).[3] And it is not at all unlikely that, after the conquest of Britain, the Saxons settled down in Tithings and Hundreds upon somewhat clannish principles. Of course the composition of the host, when levied, would vary from time to time, but a certain idea of territorial permanence would soon attach itself to the local Tithings and Hundreds from the very fact of the allotment of lands.

There seems to be great reluctance on the part of German

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[1] Ancient Laws and Institutes of England, i., 261.

[2] Ibid., 233; cf. ii., 499 and Schmid, Die Gesetze der Angelsachsen, 161.

[3] Tacitus, Germania, cap. 7. Prof. W. F. Allen, in a note upon this passage, in his edition of the *Germania*, calls attention to the parallel passage in Cæsar, *de bello Gallico*, vi., 22, where it is stated that land was assigned *gentibus cognationibusque hominum*. "From the two passages, it appears that the divisions of land, and military divisions, were alike founded upon Kinship."

specialists like Gneist and Schmid to admit that the Saxon Tithing ever became territorial before the Norman conquest, after which time Schmid,[1] at least, concedes the existence of the territorial Tithing, although he, like the rest of the German critics, continues to distinguish very sharply between the local Saxon Tithing and the purely personal Frank-pledge. Stubbs, the best English authority upon the subject of Saxon institutions, says that Tithings of a territorial character exist to this day in the western counties of Somersetshire,[2] Wiltshire, Gloucestershire and Worcestershire, and in all counties south of the Thames, except Cornwall and Kent. Stubbs, who follows Pearson upon this point, says the Tithings of some counties answer to the township of others. This statement and the researches of Pearson, in the text of his Historical Maps of England during the first thirteen centuries,[3] uncover a secret which none of the German writers appear to have discovered. They deny the existence of a territorial Tithing among the Saxons, because the name does not occur in the Domesday Book.[4] Toulmin Smith read the secret of the Tithing in his researches into the history of the English Parish and it will be as clear as daylight to anyone reflecting upon the natural relation of the personal Tithing to its landed domain. A group of at least ten families, a Tithing of inhabitants constituted a Saxon Township, which is the secular basis of the ecclesiastical Parish.

We cannot enter in this connection upon the subject of

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[1] Schmid, Die Gesetze der Angelsachsen, 648.

[2] Mr. Edward A. Freeman says he lives in the Tithing of Burcott Somerleaze, Wells, County of Somerset, which Tithing, before the recent Highway Act of the Poor Law, used to meet and tax itself for local purposes. Notices of the meeting of the Tithing used to be posted, like the notices of a New England Town Meeting.

[3] Pearson, Historical Maps, 50-52.

[4] Gneist. Das Englische Verwaltungsrecht, i., 51. In den unendlichen Einzelheiten, welche das normannische Domesday-book giebt, kommen die Worte *decania, decenna, teothing, tything* auch nicht ein einziges Mal vor.

the transformation of Tithing, Township, and Parish, but shall one day do so more fully in papers upon the Origin of Northern Towns and Southern Boroughs. We call attention, however, to a few important and fundamental facts.

1. Many modern places in England, that are recognized as Tithings, end in the Saxon word *Ton*, meaning Town, *e. g.*, the Tithing of Alkington, in Berkeley Parish.

2. Many Tithings are geographically identical with Parishes, although many Parishes often include several Tithings.

3. Many names of English Parishes end in the Saxon *Ton* and correspond territorially with old Saxon Towns.

4. In the later part of the Middle Ages, taxation in England was levied upon Tithings, Towns, and Parishes; the existence of ten householders in a township or parish was the criterion of local liability to taxation.

5. The Tithing-man, and his historic kinsmen, the Town Reeve, and the Parish Constable, assessed and collected taxes.

6. The Saxon Tithing-man became the Norman Petty Constable. It is a principle of the common law that wherever there is a Petty Constable, there is a Parish.

The following extract from the Laws of Edward the Confessor (Thorpe I., 454), throws considerable light upon the functions of the English Tithing-man in the Middle Ages: *Cum autem viderunt quod aliqui stulti libenter forisfaciebant erga vicinos suos, sapientiores ceperunt consilium inter se, quomodo eos reprimerent, et sic imposuerunt justiciarios super quosque x. frithborgos, quos decanos possumus dicere, Anglice autem tyenthe-heved vocati sunt, hoc est caput x. Isti autem inter villas, inter vicinos tractabant causas, et secundum quod forisfacturæ erant, emendationes et ordinationes faciebant, videlicet de pascuis, de pratis, de messibus, de certationibus inter vicinos, et de multis hujusmodi quæ frequenter insurgunt.* Compare

Kemble, Saxons in England, I., 253. Spelman (Works II., 51) says, "every hundred was divided into many Freeborgs or Tithings consisting of ten men, which stood all bound one to the other, and did amongst themselves punish small matters in their court for that purpose, called the Leet, which was sometimes granted over to the Lord of Manours, and sometimes exercised by peculiar officers. But the greater things were also carried from thence into the Hundred Courts; so that both the streams of Civil justice and of Criminal did there meet, and were decided by the Hundreds —as by superior judges both to the Court Baron and Court Leet also." Then commenting on the above law, Spelman continues, "Edward the Confessor (LI., cap. 32) saith, that there were justices over every ten Freeborgs, called Deans, or Tienheovod (that is, head of ten) which among their neighbours in Towns, compounded matters of trespasses done in pastures, meadows, corn, and other strife, rising among them. But the greater matters, saith he, were referred to superior justices appointed over every ten of them, whom we call Centurions, Centenaries, or Hundredors, because they judged over an hundred Freeborgs."

In the face of this testimony, it is difficult to understand how German critics and even Hallam (Middle Ages, ch. VIII., part 1) and Stubbs (Const. Hist. I., 90) can doubt that the Tithing-man settled small causes between man and man. The Selectmen of early New England Towns and the Parish Officers of Maryland had similar judicial functions. Upon the question of village-judgeship, Stubbs makes a very prudent modification of his first statement: "The Tithing-man is of course an elective officer. The idea that he was a sort of village-magistrate is without basis: although in a simple community of peasants the office of Constable, for such seems to have been the position of the Tithing-man, was held in more honour than it is now." Pearson, in his History of England (I., 252) says, "The only popular

magistrates in the country were—the Tithing and Hundred Reeves; the former were always, the latter mostly, elected by their respective communes. The smaller questions of debt and police were probably decided by these men in their respective courts; the freemen of the Tithing would meet as occasion required; the Hundred Court was summoned once a month." In the court of the Tithing we may discover the germ of vestry meeting and town meeting, and in Tithing-men, the origin of Selectvestrymen and Selectmen.

The Saxon Tithing-man was the Selectman of the Tithing. He was an elected officer, like the Petty Constable, who succeeded him. The mediæval Tithing-man's functions were patriarchal and authoritative. He was the Town Father in the true and original sense of that term. His relations were with families, as in early New England. He watched over his hamlet as the New England Tithing-man watched over his neighborhood and the congregation. He kept the public peace; he was arbiter between neighbors and kinsmen; he regulated the division of lands, the use of pastures and meadows; he announced the time of harvest and when enclosures were to be removed or fences put up. He was a man having authority in a small neighborly way. He foreshadowed the Petty Constable and the easy-going Selectmen of our modern New England Towns. But the main idea of his office was the same as that perpetuated in the original Tithing-men of New England, viz: elective, patriarchal headship over a neighborhood of *at least* ten families. This is the original, fundamental character of the office, considered as a local institution.

We have found the heart of our subject. We have stripped off the ecclesiastical tissue, which in later times enshrouded the New England Tithing-man, who is now undoubtedly dead. We have dissected away the outer layer of constabulary duties, and have found, in the patriarchal control of a Tithing, the real mechanism which for many centuries gave

such energetic life to the Tithing-man. The biologists in Baltimore have recently succeeded in isolating the mammalian heart, and in keeping it alive, by a transfusion of foreign blood, for hours after the rest of the body is entirely dead. Possibly by some such method of procedure, in the case of a live subject like the modern Constable or Selectman, we may derive a more intimate knowledge of that older institution, whose life is now beating on in kindred forms.

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